

Application No. 10/607,947  
Amendment dated November 15, 2005  
After Final Office Action of May 16, 2005

Docket No.: BA1-02-0395 (02-0395)

### REMARKS

Claims 1-14 were pending when an Office Action was mailed on May 16, 2005. Claims 1-14 were rejected. The Office Action was made final.

This Amendment is filed concurrent with filing of a Request for Continued Examination. In view of the amendments and arguments set forth herein, Applicants respectfully submit that all claims pending in this patent application are in condition for allowance. Applicants very respectfully request entry of the Amendment, reconsideration and allowance of all claims, and passage of the application to issuance.

#### I. CLAIM REJECTIONS – 35 U.S.C. § 102

Claims 1-14 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,338,130 to Baerveldt. The Office Action stated that, regarding Claim 1, Baerveldt discloses an expansion joint comprising: a first generally planar member seen as the bottom planar surface of sealing strip (S) in Figure 1, which was stated to be capable of being capable of slidably supporting a first portion of at least one section of a structure thereon; second and third generally planar members seen as retaining elements 2 in Figure 1, which were stated to be capable of being attachable to a second portion of at least one section of the structure thereon, these members being substantially co-planar with each other (as Figure 1 shows) and substantially parallel to the first member (referring again to Figure 1), the second and third members being vertically spaced-apart from the first member (referring to Figure 1); and an expansion device between the second and third members seen as the rest of the sealing strip S, which was stated as being capable of being attached to a support member that supports the at least one section of the structure thereon.

Regarding Claim 11, the Office Action stated that Baerveldt discloses the limitations of the claimed invention as discussed in regards to Claim 1 and that the flexible sealing strip S defines a hole that is capable of attaching the expansion spring to a support member that supports the adjacent sections of the structure thereon.

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The Office Action stated that the Examiner is viewing the first planar member of Claims 1 and 11 as the planar bottom surface of sealing strip S in Figure 1 of Baerveldt. The Office Action stated that the planar bottom surface of the sealing strip S is merely required to be capable of performing the function of slidably supporting a first portion of at least one section of a structure thereon (regarding Claim 1) and slidably receiving first portions of adjacent composite sections of a structure thereon (regarding Claim 11). The Office Action stated that the bottom surface of sealing strip S is capable of slidably supporting a first portion of a structure thereon.

The Office Action also stated that, regarding Claim 1, the expansion part of the sealing strip S is merely required to be capable of being attached to a support member that supports the at least one section of the structure thereon. The Office Action further stated that, regarding Claim 11, the sealing strip S defines a hole that is capable of receiving a fastener therein that is capable of attaching the expansion spring to a support member that supports the adjacent sections of the structure thereon.

Applicants appreciate the Examiner's thorough explanation regarding reasons of structure and intended use underlying the rejections. With the Examiner's helpful explanation in mind, Applicants very respectfully traverse.

A. THE BAERVELDT REFERENCE

US patent no. 5,338,130 to Baerveldt discloses an extruded thermoplastic elastomer expansion joint. Referring to Figure 1 of Baerveldt, the invention of Baerveldt is a nosing (that is, an expansion joint retainer) for a flexible expansion joint for spanning the gap between adjacent slabs of, for instance, a parking deck or bridge deck. A joint utilizing the invention of Baerveldt includes a flexible strip seal S. Baerveldt, column 2, lines 39-43. The slabs adjacent the joint along the edges have a rectangular groove formed therein. The sealing strip S is laid on the lowermost surface of the groove, and may be additionally fastened thereto with an adhesive. *Id.*, column 2, lines 49-53.

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At regular intervals in each groove are positioned anchor bolts B, or threaded bolts, embedded into the slab in the groove. The anchor bolts extend through apertures in the strip seal S and similar apertures in the nosings. *Id.*, column 2, lines 54-58.

Each nosing is dimensioned to fit in a typically dimensioned groove in the slab. Each nosing is manufactured as a co-extrusion of a main body element 1 and a retaining element 2. *Id.*, column 2, lines 59-64.

The anchor bolt B extends through pre-drilled holes in the retaining element. Above such pre-drilled holes, the material of the main element 1 is bored away to permit emplacement and tightening of a washer and a nut on the anchor bolt B. *Id.*, column 3, lines 5-9.

The only disclosed or suggested positioning of the nosing is on top of the unlabeled slabs. To that end, in reference to Figures 1 and 2 Baerveldt discloses that “[a] deflector element 3 of the same material as the retainer may also be co-extruded as an integral part of the nosing. This deflector protects the relatively more pliable material of the main body of the nosing from being damaged by snowplows.” *Id.*, column 3, lines 10-14. Further, referring to Figure 6, Baerveldt discloses that “after the anchor bolts are embedded in the edge of the concrete, the elastomeric seal is set down in a nosing having a height substantially equal to the desired depth of asphalt, and constructed according to FIG. 6 is bolted into place over the seal. Asphalt is then applied to the desired depth, directly over the retaining element and up to the edge of the top surface of the main body.” *Id.*, column 4, lines 2-8.

Finally, Baerveldt emphasizes the importance of making the Baerveldt nosing in one piece as an extrusion. Baerveldt states that a “drawback with including a steel plate in the [prior art] nosing is that it makes it necessary to mold the nosings in discrete segments, with the steel insert set in the nosing during the molding process.” *Id.*, column 1, lines 41-44. To that end, it is an object of Baerveldt “to provide an extrudable nosing with an integrally formed stiffening and reinforcing portion.” *Id.*, column 1, lines 55-57. Baerveldt explains details of providing an extrudable nosing with an integrally formed stiffening and reinforcing portion as follows:

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Each nosing...is manufactured as a co-extrusion of a main body element 1 made from a thermoplastic rubber material such as SANTOPRENE™ by Monsanto Company and a retaining element 2 made from a higher durometer thermoplastic material such as medium, high, or ultra high density polyethylene. The material of the retaining element will be chemically and thermally fused to that of the main element during the co-extrusion process, and will become integral with the main body, thereby providing a one piece nosing which may be extruded rather than molded. Accordingly, the nosings of the present invention may be provided in any desired length. *Id.*, column 2, line 59 – column 3, line 4.

Thus, Baerveldt provides an extrudable nosing with an integrally formed stiffening and reinforcing portion. The extruded, integrally-formed flexible strip seal S has a center portion and overhanging portions. The center portion of the flexible strip seal S (referred to in the Office Action as “the expansion portion of the sealing strip S”) is interposed between the two (unlabeled) slabs. No supporting structure under the unlabeled slabs is disclosed, and therefore no attachment to supporting structure can be disclosed. Further, overhanging portions of the flexible strip seal S are received on top of an upper face of the unlabeled slabs and attached to the top of the unlabeled slabs.

B. CLAIMS 1-14 ARE NOT ANTICIPATED BY THE BAERVELDT REFERENCE

Applicants very respectfully submit that Claims 1-14 are not anticipated by Baerveldt. As will be discussed below, Applicants respectfully submit that Baerveldt neither teaches nor suggests all of the claim limitations recited in Claims 1-14.

As discussed above, Baerveldt discloses a sealing strip S with a center portion and overhanging portions. Baerveldt teaches that a center portion of the flexible strip seal S (referred to in the Office Action as “the expansion portion of the sealing strip S”) is interposed between the two (unlabeled) slabs. Examination of the expansion portion of the sealing strip S as shown in Figures 1, 3, 4, 5, and 6 shows that the bottom of the expansion portion of the sealing strip S is above the bottom of the unlabeled slabs. Baerveldt does not teach or suggest attachment of the expansion portion of the sealing strip S to any structure underneath the expansion portion of the sealing strip S.

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Moreover, Baerveldt does not disclose, teach, suggest, or address in any manner whatsoever any supporting structure under the unlabeled slabs or the expansion portion of the sealing strip S. Therefore, no attachment to supporting structure (that supports the unlabeled slabs) by any part of the Baerveldt device -- including the expansion portion of the sealing strip S -- can be or is disclosed or taught or suggested by Baerveldt.

To the contrary, Claim 1, as amended, recites "an expansion device interposed between the second and third members, the expansion device including: a central portion that is attachable to a support member that supports the bottom face of the bottom surface of the at least one section of the structure thereon". Claim 11, as amended, recites "an expansion spring interposed between the second and third members, the expansion spring including: a central portion that defines a hole for receiving a fastener therein for attaching the expansion spring to a support member that supports the bottom face of the bottom surface of the adjacent sections of the structure thereon".

Therefore, Applicants respectfully submit that Baerveldt does not teach or suggest "an expansion device interposed between the second and third members, the expansion device including: a central portion that is attachable to a support member that supports the bottom face of the bottom surface of the at least one section of the structure thereon" as recited in Claim 1, as amended, or "an expansion spring interposed between the second and third members, the expansion spring including: a central portion that defines a hole for receiving a fastener therein for attaching the expansion spring to a support member that supports the bottom face of the bottom surface of the adjacent sections of the structure thereon" as recited in Claim 11, as amended.

Moreover, as discussed above, the only attachment taught or suggested by Baerveldt is that the overhanging portions of the flexible strip seal S itself are attached to an upper face of the top of the unlabeled slabs. This attachment scheme gives rise to the concern expressed in Baerveldt of damage to the nosing from snowplows.

To the contrary, Claim 1, as amended, recites second and third generally planar members of a support member -- not of the expansion device itself, but of the support member -- each having

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“an upper face that is configured to receive a *bottom* face of a portion of a *bottom* surface of the at least one section of the structure receivable thereon and attachable thereto”. Claim 11, as amended, recites “a support member including: second and third generally planar members each having an upper face that is configured to receive a *bottom* face of a portion of a *bottom* surface of the adjacent sections of the structure receivable thereon and attachable thereto”.

Therefore, Applicants respectfully submit that Baerveldt does not teach or suggest, and even teaches away from, “a support member including: second and third generally planar members each having an upper face that is configured to receive a *bottom* face of a portion of a *bottom* surface of the at least one section of the structure receivable thereon and attachable thereto” as recited in Claim 1, as amended, or “a support member including: second and third generally planar members each having an upper face that is configured to receive a *bottom* face of a portion of a *bottom* surface of the adjacent sections of the structure receivable thereon and attachable thereto” as recited in Claim 11, as amended.

Finally, as discussed above, Baerveldt stresses the drawbacks of providing an expansion joint in discrete segments and the importance of providing an extrudable nosing with an integrally formed stiffening and reinforcing portion. Thus, the sealing strip S is one piece of extrudable material that includes a center portion (referred to in the Office Action as “the expansion portion of the sealing strip S”) and overhanging portions (of the same piece of extrudable material) that are attached to an upper face of the top of the unlabeled slabs.

To the contrary, Claims 1 and 11, as amended, recite two discrete segments. Claim 1, as amended, recites one discrete segment of “a support member including...a first generally planar member...and second and third generally planar members” and another discrete segment of “an expansion device interposed between the second and third members”. Likewise, Claim 11, as amended, recites one discrete segment of “a support member including...a first generally planar member...and second and third generally planar members” and another discrete segment of “an expansion spring interposed between the second and third members”.

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Therefore, Applicants respectfully submit that Baerveldt does not teach or suggest, and even teaches away from, one discrete segment of "a support member including...a first generally planar member...and second and third generally planar members" and another discrete segment of "an expansion device interposed between the second and third members" as recited in Claim 1, as amended, and one discrete segment of "a support member including...a first generally planar member...and second and third generally planar members" and another discrete segment of "an expansion spring interposed between the second and third members" as recited in Claim 11, as amended.

Because Baerveldt neither teaches nor suggests all of the claim limitations of Claims 1 and 11, as amended, Applicants very respectfully submit that Claims 1 and 11 are not anticipated by Baerveldt and are in condition for allowance. Applicants very respectfully request entry of the amendment, and reconsideration and allowance of Claims 1 and 11.

Claims 2-10 depend from Claim 1 and Claims 12-14 depend from Claim 11. By virtue of their dependency and for other reasons, Applicants respectfully submit that Claims 2-10 and 12-14 are not anticipated by Baerveldt and are in condition for allowance. Applicants respectfully request entry of the amendment, and reconsideration and allowance of Claims 2-10 and 12-14.

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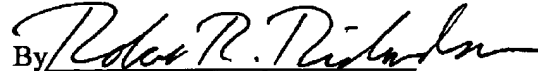
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II. CONCLUSION

In view of the above amendments and arguments, Applicants very respectfully submit that Claims 1-14 are not anticipated by Baerveldt and are in condition for allowance. Applicants very respectfully request entry of the Amendment, and reconsideration and allowance of Claims 1-14.

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Respectfully submitted,

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